

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
SAN ANTONIO DIVISION

ROGELIO CARLOS, III and MYRNA CARLOS,	§	
	§	
Plaintiffs,	§	
	§	
VS.	§	CIVIL CAUSE NO. SA-16-CA-0251-FB
	§	
CARLOS CHAVEZ, VIRGILIO GONZALEZ,	§	
JAMES YBARRA, MARK DELGADO, CITY	§	
OF SAN ANTONIO, SAN ANTONIO POLICE	§	
DEPARTMENT and DETECTIVE JOHN DOE,	§	
and WILLIAM VANNESS,	§	
	§	
Defendants.	§	

ORDER ACCEPTING REPORT AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

Before the Court are the Report and Recommendation of United States Magistrate Judge filed February 21, 2020 (docket #274); Plaintiffs' Objection to the Magistrate Judge's February 21, 2020 Report and Recommendation Regarding Defendant William VanNess's Motion for Summary Judgment filed March 9, 2020 (docket #277); Plaintiffs' Objection to the Magistrate Judge's February 21, 2020 Report and Recommendation Regarding Defendants Chavez, Gonzalez, Ybarra, and Doe's Motion for Summary Judgment filed March 16, 2020 (docket #283); Plaintiffs' Objection to the Magistrate Judge's February 21, 2020 Report and Recommendation Regarding Defendant The City of San Antonio's Motion for Summary Judgment filed March 16, 2020 (docket #284); Defendant The City of San Antonio's Response to Plaintiffs' Objections to the Magistrate Judge's February 21, 2020 Report and Recommendation Regarding Defendant the City of San Antonio's Motion for Summary Judgment filed March 30, 2020 (docket #288); Defendants' Chavez, Gonzalez, Ybarra, and Doe's Response to Plaintiffs' Objection to the Magistrate Judge's February 21, 2020 Report and Recommendation Regarding Defendants Chavez, Gonzalez, Ybarra, and Doe's Motion for Summary Judgment filed

March 30, 2020 (docket #289); Plaintiffs' Objections to the Magistrate Judge's August 27, 2019 Order Granting Defendant William VanNess's Objections and Motion to Strike Dr. Robert J. ScLabassi filed September 10, 2019 (docket #254); Defendant William VanNess, M.D.'s Response to Plaintiff's Objection to the Magistrate Judge's August 27, 2019 Order Granting Defendant William VanNess's Objections and Motion to Strike Dr. Robert J. ScLabassi filed September 17, 2019 (docket #260); and Plaintiffs' Reply in Support of Their Objections to the Magistrate Judge's August 27, 2019 Order Granting Defendant William VanNess's Objections and Motion to Strike Dr. Robert J. ScLabassi filed on October 1, 2019 (docket #263).

Where no party has objected to a Magistrate Judge's Report and Recommendation, the Court need not conduct a de novo review of them. *See* 28 U.S.C. § 636(b)(1) ("A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings and recommendations to which objection is made."). In such cases, the Court need only review the Report and Recommendation and determine whether they are either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918 (1989).

On the other hand, any Report or Recommendation to which there are objections requires de novo review by the Court. Such a review means that the Court will examine the entire record, and will make an independent assessment of the law. The Court need not, however, conduct a de novo review when the objections are frivolous, conclusive, or general in nature. *Battle v. United States Parole Commission*, 834 F.2d 419, 421 (5th Cir. 1987).

In the Report, United States Magistrate Judge Richard B. Farrer recommends that: (1) Dr. VanNess' Motion for Summary Judgment (docket #201) should be granted because the plaintiffs lack reliable evidence to show causation, which is a necessary element of all claims against this defendant which are in issue; (2) Defendants Carlos Chavez, Virgilio Gonzalez, James Ybarra, Mark Delgado, and Detective John Doe's Motion for Summary Judgment (docket #202) should be granted in part such that

all of the unlawful arrest claims should be dismissed and all claims against Officer Delgado should be dismissed, but denied in part as to the excessive force claims against Officers Chavez and Gonzalez and Detective Doe; and (3) Defendant the City of San Antonio's Motion for Summary Judgment (docket #206) should be granted. In addition, on August 27, 2019, Magistrate Judge Farrer issued an Order which granted Defendant William VanNess M.D.'s Objection to the Qualifications of Plaintiffs' Expert, Dr. Robert J. Sclabassi, M.D. (docket #190) and Defendant William VanNess, M.D.'s Motion to Exclude Plaintiffs' Expert, Robert J. Sclabassi, M.D. (docket #196) such that Dr. Sclabassi is allowed to opine on the standard of care for a neuromonitor and whether Dr. VanNess breached that standard but is excluded from:

testifying with respect to the chart that is the subject of Dr. VanNess's motion[.] Plaintiffs failed to establish that such testimony would be sufficiently reliable. For example, there is no evidence reflecting that the chart was subject to peer review, error analysis, or that it would be generally accepted within the relevant scientific community.

Dr. Sclabassi is also excluded from offering any opinion on causation. There has been no showing that Dr. Sclabassi's opinion on causation would be sufficiently reliable, especially given its connection to the aforementioned chart.

Order, docket #252 at pages 3-4. Plaintiffs' have objected to this order "to the extent it excludes Dr. Sclabassi from offering any opinion on causation." Plaintiffs' Objections to the Magistrate Judge's August 27, 2019 Order Granting Defendant William VanNess's Objections and Motion to Strike Dr. Robert J. Sclabassi, docket #254 at page 1.

Ordinarily, the standard of review for matters decided by a magistrate judge and appealed to the district court is found in rule 72 of the Federal Rules of Civil Procedure. Rule 72 provides in part:

The district judge in the case must consider timely objections and modify or set aside any part of the order that is clearly erroneous or is contrary to law.

FED. R. CIV. P. 72(a). A decision is considered to be clearly erroneous or contrary to law when the reviewing court is left with the definite and firm conviction that a mistake has been committed. Such is not the case here. However, as plaintiffs' assert in their reply in support of their objections to the August 27, 2019 Order, the impact of this order on the plaintiffs' claim is dispositive in nature.

Plaintiffs' Reply in Support of Their Objections to the Magistrate Judge's August 27 2019 Order,
docket #263 at page 3. Out of an abundance of caution, the Court will conduct a de novo review of Magistrate Judge Farrer's ruling as to Dr. Sclabassi as well.

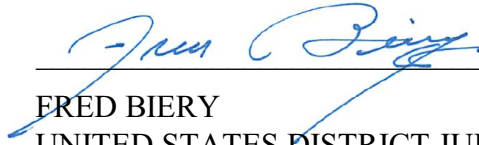
The Court has reviewed all of the plaintiffs' objections to the Report and Recommendation and the Order of August 27, 2019 as to Dr. Sclabassi as well defendants' responses thereto, has conducted a de novo review of the Magistrate Judge's Report and Recommendation, the August 27, 2019 Order, and the voluminous record before this Court, and finds the plaintiffs' objections without merit. Accordingly, the Court hereby accepts, approves, and adopts the Magistrate Judge's factual findings and legal conclusions contained in the Report and Recommendation (docket #274) and Order of August 27, 2019 (docket #252), and incorporates herein the arguments and authorities presented by the defendants in their motions for summary judgment and their responses to plaintiffs' objections, and agrees that: (1) Dr. VanNess' Motion for Summary Judgment (docket #201) should be granted; (2) Defendants Carlos Chavez, Virgilio Gonzalez, James Ybarra, Mark Delgado, and Detective John Doe's Motion for Summary Judgment (docket #202) should be granted in part such that all of the unlawful arrest claims should be dismissed and all claims against Officer Delgado should be dismissed, but denied in part as to the excessive force claims against Officers Chavez and Gonzalez and Detective Doe; and (3) Defendant the City of San Antonio's Motion for Summary Judgment (docket #206) should be granted. Therefore, the Report and Recommendation shall be accepted pursuant to 28 U.S.C. § 636(b)(1).

Accordingly, IT IS HEREBY ORDERED that the Report and Recommendation of the United States Magistrate Judge, filed in this case on February 21, 2020 (docket #274) is ACCEPTED pursuant to 28 U.S.C. § 636(b)(1) such that: (1) Dr. VanNess' Motion for Summary Judgment (docket #201) is GRANTED and the claims against him are DISMISSED; (2) Defendants Carlos Chavez, Virgilio Gonzalez, James Ybarra, Mark Delgado, and Detective John Doe's Motion for Summary Judgment (docket #202) is GRANTED IN PART such that all of the unlawful arrest claims are DISMISSED and all claims against Officer Delgado are DISMISSED, but DENIED IN PART as to the excessive force

claims against Officers Chavez and Gonzalez and Detective Doe which shall proceed to trial; and (3) Defendant the City of San Antonio's Motion for Summary Judgment (docket #206) is GRANTED and the claims asserted against the City are DISMISSED.

It is so ORDERED.

SIGNED this 31st day of March, 2020.



FRED BIERY
UNITED STATES DISTRICT JUDGE